

**■ §2.52 REVOCATION DECISIONS.**

**(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:**

(1) Restore the parolee to supervision including where appropriate: (i) Reprimand; (ii) modification of the parolee's conditions of release; (iii) referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) It is the Commission's interpretation of 18 U.S.C. 4210(b)(2) that, if a parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by any term of imprisonment, detention, or incarceration in any penal facility, forfeiture of time from the date of such release to the date of execution of the warrant is an automatic statutory penalty, and such time shall not be credited to the service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d)(1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in §2.10(b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

(e) In determining whether to revoke parole for noncompliance with a condition of fine, restitution, court costs or assessments, and/or court ordered child support or alimony payment, the Parole Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

#### *Appendix to §2.52*

**General Statement of Policy.** In the case of any revocation hearing (except for Special Parole Term Violators) conducted within the Ninth Circuit, the Commission will exercise discretion in determining whether or not to order forfeiture of all or part of the time spent on parole pursuant to 18 U.S.C. 4210(b)(2). The Commission's policy shall be to consider granting credit for time on parole in the case of a parole violator originally classified in the very good risk category (pursuant to 28 C.F.R. 2.20) if the following conditions are met. The conviction must not be for a felony offense. The parole violation behavior (the offense of conviction plus any other violations) must be non-violent, and not involve a repeat of the parole violator's original offense behavior. Further, an adequate period of reimprisonment pursuant to the reparole guidelines at 28 C.F.R. 2.21, and an adequate period of renewed supervision following release from reimprisonment or reinstatement to supervision, must be available without forfeiting street time. In the case of a parole violator originally classified in other than the "very good" risk category, it shall be the Commission's policy to order the forfeiture of all time spent on parole absent extraordinary circumstances. In no instance will the Commission grant

**credit in the case of a repeat violator on the current sentence.**

*Notes and Procedures*

■ **2.52-01. *Specific Findings Prerequisite to Forfeiture of Street Time.***

(a) A separate order requiring the forfeiture of none, a specific number of days, or all of the "street time" is to be entered if revocation is ordered. "Street time" may only be forfeited as provided in paragraphs (b), (c), and (d) below.

*(b) Absconders and Willful Refusals to Respond.*

(1) *Absconders.* An absconder is subject to forfeiture of all the time he was intentionally in absconder status. The term "absconding" describes not only the parolee who intentionally leaves the district of supervision without permission, but also one who intentionally conceals himself from active supervision within the district. Normally, a precise date from which to measure the absconder period will be found in the U.S. Probation Officer's letter or in the U.S. Probation Officer's testimony. This date might be the date the U.S. Probation Officer first tried to contact the parolee unsuccessfully and first discovered that he or she had left his place of residence and his whereabouts became unknown. However, the date may in some cases, be the date of actual departure (if known for certain) or the date a written permission terminated, if the absconder failed to return within the time set (a copy of such permission should be presented or verified at the hearing). In any case, the date should be conclusive and not a date arrived at by guess-work; it must be a specific date mentioned in the documentary evidence available or in the testimony. The voluntary return of the parolee, or execution of the warrant (or filing of a detainer) marks the limit of the period which can be forfeited. If no clear earlier date is possible, the date on which the warrant was issued should be used. Note: In all cases of failure to report or submit to supervision, the failure must have been intentional. For example, if the parolee was hospitalized because of an emergency, no forfeiture should be made. A parolee who absconds and then is detained as a result of a criminal charge (federal, state, or local), or a parole violation charge from another jurisdiction, should have time forfeited from the date he absconded till the date taken into custody on such charge.

(2) *Willful Refusal to Respond.* The same need for conclusiveness applies to a finding that a parolee failed to respond to any order of his probation officer or of the Commission. If the parolee refused to respond to an order of his probation officer, the date selected must be the date the parolee was to have responded and failed. If a summons was disobeyed, the date the period begins is the date the hearing or interview was to have been held. The end of the forfeited period is the date the parolee finally reported to his probation officer, or the date a warrant was filed as a detainer or executed. "Street time" may also be forfeited for any period of time during which a parolee continuously and willfully fails to abide by one of the conditions of parole (e.g., failing to submit supervision reports, failing to report for drug testing) even though a parolee complies with all other conditions of release.

*(c) New Convictions.*

(1) Any new conviction (whether felony or lesser charge) which is punishable by any term of confinement or imprisonment in a penal facility requires forfeiture of all "street time," except as noted under paragraph (2) and (3). Actual imprisonment need not have been imposed. If in doubt as to whether the offense is punishable by a term of imprisonment, the decision as to possible forfeiture must be withheld pending investigation by the probation office. Note: In some cases, a minor conviction that is classified under the "administrative section" of the reparole guidelines will nonetheless require "street time" forfeiture.

(2) For purposes of forfeiture of "street time" do not use "non-final," Indian Tribal Court, or foreign convictions (see 2.48-09). However, the fact that a conviction is under appeal or is subject to being set aside at some later date does not alter the validity of the conviction for the purpose of forfeiting street time. See 2.48-09(b)(1) for a definition of a "non-final" conviction.

(3) Where forfeiture of cash bond (collateral) in lieu of court appearance constitutes a conviction, such conviction may not be used to forfeit street time. This is because the offense is deemed to be one not punishable by imprisonment since the offender has the option of avoiding imprisonment by forfeiting collateral.

(4) Where a prisoner, in appealing the revocation of his parole, specifically denies that a conviction was sustained, the Regional Commissioner should request the U.S. Probation Officer to submit a copy of the judgment of conviction (certified if possible by the clerk of the court). In this way, disputes of this nature (which are rare) can be conclusively resolved. However, in all

cases in which the fact of conviction is not expressly denied, the Commission is entitled to rely upon the written report of the U.S. Probation Officer stating that a conviction has been sustained and that it is or is not of a type requiring forfeiture of time on parole pursuant to 18 U.S.C. 4210(b). It is not grounds for a rehearing in such a case that further evidence to prove the fact of conviction was not obtained. If the prisoner actively contests the fact of conviction before the National Appeals Board, the correct remedy would be to decide the case on all other issues and to remand the case to the Regional level so that the issue concerning the conviction can be resolved. If the prisoner turns out to be correct, the Regional Commissioner would then reopen the case under 28 C.F.R. 2.28 for appropriate action.

(d) *Exceptions:*

(1) No forfeiture is possible for those committed under the Youth Corrections Act, the Narcotic Addict Rehabilitation Act, and those serving foreign sentences in this country pursuant to their transfer under a prisoner exchange treaty. However, absconding by a YCA, NARA, or foreign code offender will require extending the term of sentence by the period of time the parolee was in absconder status. A separate order at the time the parolee is revoked should show (by dates) the time to be added to the sentence.

(2) For cases sentenced under the District of Columbia (D.C.) Code, forfeiture of all "street time" is mandatory, regardless of the basis of revocation.

(3) In the case of a special parole term violator whose parole is revoked, all "street time" shall be forfeited, regardless of the basis of revocation.

(e) *Forfeiture of "Street Time."* In all cases, the possibility of forfeiture must be discussed with the prisoner at the time of review of the specific charge giving rise to that possibility, and the possible period which may be forfeited must be discussed at that time. NOTE: "Street time" shall be forfeited in any case in which (a) parole has been revoked and, (b) the parolee has been convicted of a new crime (as described above) regardless of whether such crime was initially charged as a violation of parole.

(f) *Conviction After Revocation Hearing.* When a conviction occurs after a revocation hearing (and there was none prior to the revocation hearing) the Regional Commissioner shall reopen the case and schedule a subsequent hearing with the violator. See §2.28(d). Following such hearing, a new order may be made relative to forfeiture of "street time." Note: The provision of this hearing in order to forfeit "street time" is a statutory requirement.

(g) *Credit for Time in Confinement.* Upon revocation, credit is to be given a prisoner towards service of his maximum sentence for every day in federal confinement not previously credited (including confinement on a warrant later withdrawn; and confinement on an improperly executed warrant, whether or not the prisoner was also in state or local custody). In conducting revocation hearings where street time is forfeited, examiners should be alert to situations where a parolee has spent time in confinement as described above. In such case, the following should be added to the Order: "Time spent in confinement from date to date is to be credited toward service of maximum sentence." It is to be noted that whether credit toward the parole guidelines is given is a separate determination governed by 28 C.F.R. 2.21.

■ 2.52-02. *Reparole Guidelines.*

Reparole guidelines should be completed for all revocation hearings. Note: The revocation packet prepared for use by the examiner should include the previous salient factor score sheet and pre-sentence investigation to facilitate recomputation of the salient factor score.

■ 2.52-03. *Driving While Impaired.*

In the case of a parolee found to have violated parole by driving under the influence of (while impaired by) alcohol or drugs, revocation will be the presumptive sanction if the parolee is found to have been driving in a life threatening manner or has caused a serious accident, or if the violation is the second or subsequent such violation during the current period of supervision. Whenever parole is not revoked, the presumptive response will be imposition of a special condition that the parolee undergo an aftercare treatment program for alcoholism and surrender his driver's license to the U.S. Probation Officer for a period of time determined by the Regional Commissioner (normally 90-180 days). Consideration of the public welfare shall guide the Commissioner in determining whether such action may be withheld in a particular case.